Office - Supreme Court, U.S.
FILED
FEB 10 1982
ALEXANDER L. STEVAS,
CLERK

CASE NO. 81-5971

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1981

BEAUFORD WHITE,

Petitioner,

vs.

THE STATE OF FLORIDA,

Respondent.

BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

JIM SMITH
Attorney General

CALVIN L. FOX, Esquire
Assistant Attorney General
Suite 820
401 N.W. 2nd Avenue
Miami, Florida 33128

(305) 377-5441

QUESTION PRESENTED

WHETHER A SUBSTANTIAL FEDERAL QUESTION OR ANY CONSTITUTIONAL CONFLICT IS PRESENTED BY THE OPINION OF THE SUPREME COURT OF FLORIDA.

TABLE OF CONTENTS

	PAGE
QUESTION PRESENTED	i
TABLE OF CITATIONS	ii
PREFACE	iii
OPINIONS BELOW	1
JURISDICTION	2
CONSTITUTIONAL AND STATUTORY PROVISIONS	3
STATEMENT OF THE CASE	4-5
SUMMARY OF ARGUMENT	6
ARGUMENT	7-11
CONCLUSION	12

TABLE OF CITATIONS

CASE	PAGE
Edmund v. Florida, U.S.Sup.Ct. Case No. 81-5321, certiorari granted October 19, 1981	5
Lockett v. Ohio, 438 U.S. 586, 625 (.978)	7
Proffitt v. Florida, 428 U.S. 242	8, 11
Rice v. Sioux City Cemetary, 349 U.S. 70 (1955)	7
White v. State, 403 So.2d 331 (Fla. 1981)	1, 4

OTHER AUTHORITIES

STATUTES

Section 921.141 Florida Statutes (1977) 8

UNITED STATES CODE

28 U.S.C. 1257(3) 2, 7

PREFACE

The Petitioner, Beauford White, was the Appellant in the Supreme Court of Florida. The Respondent, The State of Florida, was the Appellee in the Supreme Court of Florida. In this brief, the parties will be referred to as they appear before the trial court.

I.

OPINIONS BELOW

The opinion of the Supreme Court of Florida is reported at White v. State, 403 So.2d 331 (Fla. 1981). There is no official reporter for citation to this opinion.

II.

JURISDICTION

The Defendant seeks jurisdiction herein pursuant to 28 U.S.C. §1257(3).

III.

CONSTITUTION AND STATUTORY PROVISIONS

The Defendant's appendix to his brief on Petition for Certiorari accurately recites the applicable Constitutional and statutory provisions.

IV.

STATEMENT OF THE CASE

After a trial by jury in the Circuit Court of the Eleventh Judicial Circuit of Florida, the Defendant, Beauford White, was convicted of six (6) counts of First Degree Murder, two (2) counts of Attempted First Degree Murder and four (4) counts of robbery. See, White v. State, 403 So.2d 331 (Fla. 1981). After an extensive sentencing proceeding, the Defendant was sentenced to death. Id. On appeal to the Supreme Court of Florida, the Court affirmed the Defendant's judgment and sentences. Id.

The essential facts surrounding the crimes herein are recited in the Florida Supreme Court's opinion:

> 'On July 27, 1977, at approximately 8:15 p.m., an adult black male, posing as an employee of the power company, requested permission from Margaret Wooden to enter her home and check the electrical system. After being allowed in and checking outlets in several rooms, the intruder drew a gun and proceeded to tie Ms. Wooden's hands behind her back and blindfold her. The intruder, who identified himself to her as "Lucky" and was later identified as John Ferguson, asked Ms. Wooden for drugs, money and jewelry and began searching the premises. Ferguson's coconspirators, defendant and Marvin Francois, soon entered the house. Both of these men were also armed and all three donned masks covering their faces from the nose down. The three ransacked the house looking for valuables until about an hour later when the owner of the house, Livingston Stocker, and five of his friends arrived. Upon their arrival, Stocker and his friends were forced to lie facedown on the floor while their hands were tied behind their backs. A short time later, Ms. Wooden's boyfriend arrived at the house and he too was tied up. At gunpoint the victims were asked for money and drugs, and one by one were searched. At some point during the ordeal the mask of one of the intruders fell from his face and a discussion ensued as to the need for killing the victims. Following this discussion, Ms. Wooden and her boyfriend were moved back to the bedroom while the other six victims were held captive in the living room. Ferguson then shot Ms. Wooden and her boyfriend in the back of the head while Francois systematically shot the other six victims in the head. Miraculously, Ms. Wooden and a Johnnie H. Hall survived and testified at the trial of the defendant. At trial, Hall was able to identify the

> defendant as one of the intruders, but both Hall and Ms. Wooden identified the other two intruders as the person who did the actual shooting.
>
> "A fourth participant in these crimes, Adolphus Archie, testified on behalf of the state in return for being allowed to plead guilty to reduced charges. Archie, who served as the "wheelman" and never entered the house, identified the defendant as a participant in the criminal scheme. Archie testified that he and defendant had been requested to participate in the "ripoff of a dope man" but were instead duped into participating in what he said was a planned contract murder of Stocker and perhaps other persons for drug-related reasons. Following the slayings, Archie testified that he met the other three at defendant's motel room where the proceeds of the robberies were divided among them. He testified that the defendant was upset and refused to participate in the disposal of the weapons.
>
> "The defendant was arrested on September 2, 1977 and confessed to his participation in the criminal episode. His detailed account of what had occurred was consistent with the trial testimony of the surviving victims. The defendant was also linked to the scene of the crimes by a single partial fingerprint which was lifted from the dust cover of a stereo set in the house. This fingerprint was identified by police as the fingerprint of the defendant."
>
> Id.

Upon conviction for the crimes noted above, the jury unanimously recommended life and the trial court after a presentence investigation imposed the death penalty. Id., at 334. Upon appeal to the Supreme Court of Florida and again herein the Defendant primarily relies upon the foregoing jury recommendation and the fact that he was a non-triggerman in asserting constitutional error. See also, Edmund v. Florida, U.S.Sup.Ct. Case No. 81-5321, certiorari granted October 19, 1981.

V.

SUMMARY OF ARGUMENT

The Defendant has failed to show any substantial federal question or that the opinion of the Supreme Court conflicts in any way with any decision of the State or Federal Courts.

VI.

ARGUMENT

The Defendant seeks review of the State's court judgment herein pursuant to 28 U.S.C. §1257(3). It is well settled that in order to invoke the jurisdiction of this Court under said statute a federal question must be presented. Moreover, the mere presence of a federal question will not warrant review by this Court unless that federal question is "substantial." See Rice v. Sioux City Cemetary, 349 U.S. 70 (1955). The present claims are neither substantial, nor does the opinion of the Supreme Court of Florida conflict in any way with any other state or federal court.

The Defendant substantially focuses his complaint herein upon the dissenting opinion of Justice White in Lockett v. Ohio, 438 U.S. 586, 625 (1978) and claims that the imposition of the death penalty in the present case is unconstitutional, because it is based upon a felony murder theory and the Defendant had no intent to kill. In disposing of these claims the Florida Supreme Court explained that:

> "[W]e note that we have already decided the reasonableness of taking into account as an aggravating circumstance the fact that the murder was committed during the commission of another serious felony. See State v. Dixon. Second, the defendant's argument overlooks the plurality opinion in Lockett v. Ohio, which states that the Constitution neither forbids a state from enacting felony-murder statutes nor from making aiders and abetters equally responsible with principals. Id. at 602, 98 S.Ct. at 2963. In response to Justice White's argument that a defendant must possess an intent to cause the death of the victim to impose the death penalty, Judge Rehnquest in a separate opinion stated that centuries of common law doctrine establishing felony murder and the relationship between aiders and abettors would have to be rejected to adopt this view. Id. at 635, 98 S.Ct. at 2976. A majority of the United States

> Supreme Court obviously has not adopted the view that the death penalty may not constitutionally be imposed under the circumstances existing in the instant case. To the contrary, in striking down Ohio's death penalty statute because it limited consideration of relevant mitigating circumstances to those statutorily listed, the Court specifically distinguished Florida's death penalty statute by noting that it permitted the sentencer to consider any aspect of the defendant's character and record or any circumstances of his offense as an independently mitigating factor. Id. at 606-07, 98 S.Ct. at 2965-65. Thus, at least implicitly, the Court recognized the continuing vitality of Proffitt v. State, 428 U.S. 242, 96 S.Ct. 2960, 49 L.Ed.2d 913 (1976), upholding the constitutionality of Florida's death statute, in the context of a claim which was similar to the eighth amendment claim raised by the defendant in the instant case."

The Defendant cites to no other relevant authority for his claims of constitutional error. The well-reasoned analysis of the Supreme Court of Florida based upon the plurality opinion in Lockett and Proffitt v. Florida, 428 U.S. 242 (1976), should not be disturbed.

The Defendant's second ground for assertion of jurisdiction is that Section 921.141 Florida Statutes (1977) was unconstitutional because there was no basis to overrule the jury verdict and because the trial court improperly considered three (3) aggravating circumstances. The trial judge in the present case found that all eight (8) of the aggravating circumstances in Section 921.141 were present and no statutory mitigation was present. Id., at 337. The Florida Supreme Court struck three (3) of the aggravating circumstances, but sustained five others and also found no mitigating circumstances. Id. at 339.

In sustaining one of the aggravating circumstances the Florida Supreme Court reviewed the facts as to why the death penalty was particularly appropriate as applied to the Defendant:

"The trial judge in his findings recognized that the defendant was opposed to the killings but also pointed out that he, nonetheless, stood by armed and allowed the shootings to take place. In Riley v. State, 366 So.2d 19 (Fla. 1978), we held that although this aggravating circumstance was concerned primarily with the killing of law enforcement officers, it could validly be applied when the victim was not a law enforcement officer if the dominant motive for murder was the elimination of witnesses. See also Menendez v. State, 368 So.2d 1278 (Fla. 1979). Here there was evidence presented that a "contract" was placed for the murder of at least one of the victims. However, as noted by the trial court in its sentencing order, the presence of as many as seven of the victims was not anticipated. After the mask of one of the intruders fell from his face the three intruders discussed the need for killing the victims. Although the defendant was opposed to the killings, he had fully participated in the robberies, and did nothing to prevent or otherwise disassociate himself from the murders which then took place. Following the murders, the defendant voluntarily returned to his motel room with his co-felons and accepted his share of the proceeds taken during the robberies. There one of the intruders informed the wheelman Archie that it was "the St. Valentine's Day Massacre," but told him not to worry because "not one of them [the victims] should live." We conclude that there is sufficient evidence to sustain the trial judge's finding that the capital felonies were committed in an effort to avoid arrest by eliminating witnesses to the crime."

Id., at 338.

In rejecting any claim of statutory mitigation the Court also concluded that:

"We find absolutely no evidence to support the assertion that defendant acted under coercion or the domination of another. We also do not find that the defendant played a minor role as an accomplice. He fully participated in the subduing and intimidation of the victims, in ransacking the house looking for valuables and stood by while the victims were shot one by one. It was his motel room which was used as a place to plan the crimes and to divide the loot after the crimes were completed. The trial judge properly rejected the applicability of these two mitigating circumstances."

Id.

Similarly in rejecting the Defendant's claim below that the jury should not have been overruled the Florida Supreme Court explained that:

> "In arriving at a conclusion contrary to the jury recommendation the trial judge noted that as a result of the presentence investigation and information presented at sentencing he was made aware of a number of factors which the jury did not have an opportunity to consider. Among these factors were the defendant's prior conviction of a violent felony (attempted rape) and the fact he was still on parole at the time the offenses in this case were committed (aggravating circumstances (5)(a) and (5)(b) supra), which circumstances were not established before the judge at the time he rendered sentence. The trial judge also found that the defense counsel's vivid description to the jury on the effects of being electrocuted was calculated to influence a life sentence through emotional appeal. The court concluded that the death sentence was appropriate in light of the overwhelming aggravating circumstances which far outweighed any possible mitigating circumstances. After careful deliberation we conclude that the death sentence is warranted.
>
> "Although the advisory recommendation of the jury is to be accorded great weight, the ultimate decision on whether the death penalty should be imposed rests with the trial judge. Hoy v. State, 353 So.2d 826 (Fla. 1977), cert. denied, 439 U.S. 920, 99 S.Ct. 293, 58 L.Ed.2d 265 (1978). Death is presumed to be the proper penalty when one or more aggravating circumstances are found unless they are outweighed by one or more mitigating circumstances. State v. Dixon, supra. In this case the trial court properly found five aggravating and no mitigating circumstances under the death statute. The only colorable mitigating circumstance was the non-statutory consideration that the defendant was not the triggerman. We do not believe, however, that this factor alone outweighs the enormity of the aggravating facts, especially in light of the defendant's full cooperation in the robberies and complete acquiescence in the cold-blooded systematic murder or attempted murder of eight individuals. We hold, therefore, that the trial judge imposed the death sentence consistently with Tedder. Cf. Dobbert v. State, 375 So.2d 1069 (Fla. 1979); Barclay v. State, 343 So.2d 1266 (Fla. 1977), cert. denied, 439 U.S. 892, 99 S.Ct. 249, 58 L.Ed.2d 237 (1978); Hoy v. State, supra; Sawyer v. State, 313 So.2d 680 (Fla. 1975), cert. denied 428 U.S. 911, 96 S.Ct. 3226, 49 L.Ed.2s 1220 (1976)."
>
> [Footnote omitted.]

Id., at 339-340.

It is wholly apparent that the Supreme Court of Florida's opinion sustaining the death penalty herein constitutes a well-reasoned judgment consistent with Proffitt v. Florida. The Defendant's complaint of constitutional error is therefore without substantial basis.

VII.

CONCLUSION

The Defendant has failed to present any matter sufficient to warrant the exercise of this Court's jurisdiction pursuant to 28 U.S.C. 1257(3).

RESPECTFULLY SUBMITTED, On this 9th day of February, 1982, at Miami, Dade County, Florida.

JIM SMITH
Attorney General

CALVIN B. FOX, Esquire
Assistant Attorney General
401 N.W. 2nd Avenue, Suite 820
Miami, Florida 33128

(305) 377-5441

VIII.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that three (3) true and correct copies of the Brief of the Respondent, THE STATE OF FLORIDA, were caused to be served by United States Mail, First Class delivery prepaid, upon Thomas G. Murray, Attorney for the Petitioner, Suite 1002, 3050 Biscayne Boulevard, Miami, Florida 33137 on this 9th day of February, 1982.

CALVIN L. FOX, Esquire
Assistant Attorney General

ac/